



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the
Request for Opinion concerning
the conduct of LAURAYNE MURRAY,
Member, Pahrump Town Board,
State of Nevada,
Subject.

Request for Opinion No.: 08-07C

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

INTRODUCTION, JURISDICTION, RELEVANT STATUTES AND OPINIONS (TAB A):

Introduction

The following is the Executive Director's recommendation regarding just and sufficient cause based upon the Research Analyst's report.

A Request for Opinion (Complaint) concerning Murray's conduct was submitted by Paul Willis (Willis) on March 31, 2008.

Murray submitted a Response on April 14, 2008.

Laurayne Murray (Murray) is chair of the Pahrump Town Board (Board) and has been a member of the Board since January 2004. Her term expires December 31, 2008.

The Board establishes the Town budget and disburses tax revenues for the unincorporated Town of Pahrump. As such, part of the Board's responsibility includes decisions regarding the Pahrump Valley Fire and Rescue Service (PVFRS), an affiliate of the International Association of Fire Fighters (IAFF).

Murray's husband, Timothy Murray, has been employed by PVFRS as an Emergency Medical Technician/Fire Fighter since October 2003 and is the president of the IAFF Local 4068 (Local). As president of the Local, he is currently leading the negotiation team for the Local contract negotiations for the union's 2008 – 2009 employment contract between the Town of Pahrump and PVFRS.

INTRODUCTION, JURISDICTION, RELEVANT STATUTES AND OPINIONS (CONTINUED)

On March 11, 2008, the Board met at its regularly scheduled meeting. A motion was made to close the meeting to discuss “labor settlement terms.” Board member Don Rust (Rust) commented that Murray should recuse herself from this closed session, and if she did not do so, he would not attend. Murray disclosed that she is related to the person (her husband) making a presentation at the closed session and she was participating in the closed session. After the closed session, vice-chair John McDonald (McDonald) announced that no action would be taken at that time.

Jurisdiction

In her capacity as a member of the Pahrump Town Board, Murray is a public officer as defined by NRS 281A.160. Therefore, the Commission has jurisdiction over this complaint.

Relevant Statutes and Opinions (Endnotes)

NRS 281A.160. “Public officer” defined.¹

NRS 281A.400. A code of ethical standards is hereby established to govern the conduct of public officers . . .²

NRS 281A.420. Voting by public officers; disclosures required of public officers...³

NRS 281A.440. Rendering of opinions by Commission: Requests . . .⁴

Opinion 97-07 requested by Janet Kubichek, Member, Humboldt County Commission.⁵

Opinion 99-56 requested by Bruce Woodbury, Member, Clark County Commission.⁶

Opinion 06-03 requested by Laurayne Murray, Member, Pahrump Town Board.⁷

REQUEST FOR OPINION (COMPLAINT) (TAB B):

Murray chaired the Board meeting held on March 11, 2008. An item posted on the agenda was for a closed session allegedly concerning the union’s employment contract for 2008. Murray’s husband allegedly presented the union contract information to the Board during the closed session.

In March 2006, Murray requested an advisory opinion from the Ethics Commission regarding her participation in union matters involving her husband and his Local. The Commission rendered Advisory Opinion No. 06-03 wherein the Commission opined that Murray should disclose her interest and abstain whenever the issue of collective bargaining with PVFRS and IAFF is before the Board. Although, Murray discloses her interests sometimes, she allegedly never abstains.

SUBJECTS’ RESPONSE (TAB C):

The closed session was conducted at the request of the Town’s legal counsel. The presentation was made by Tim Murray as president of the Local and was information on personnel issue involving an employee(s) of PVFRS. The closed session had nothing to do with the union needs,

employment contract, negotiation, salary, benefits, or promotion that would affect either Murray or her husband.

Murray consulted with the Board legal counsel prior to the meeting.

The Town is currently in negotiations with the Local for their collective bargaining agreement. Although the chair is normally included on the negotiating team, Murray recused herself from participating on the negotiating team.

INVESTIGATIVE ACTIVITIES (TAB D):

- Reviewed the Complaint and Response documents.
- Interviewed Michael Sullivan (Sullivan), Finance Director and acting Town Manager.
- Interviewed Carl Joerger, Esq. (Joerger), Pahrump Town Attorney.
- Left messages for McDonald, Board Vice-Chair; Dan Sprouse, Board Member.
- Obtained and reviewed Agendas and Minutes of the March 11, 2008 and 25, 2008 Pahrump Town Board meetings. Requested audio recordings of the meetings.
- Reviewed NRS 241 Open Meeting Law; (the agenda references “NRS 241.031(3a),” – this section does not exist)
- Reviewed hearing transcript, staff summary and Opinion for Commission Opinion No. 06-03.
- Reviewed Opinions referred to in Opinion No. 06-03 and Opinions related to failure to comply with previous Commission advisory opinion.
- Obtained and reviewed Pahrump Valley Times newspaper article dated March 14, 2008 regarding the closed session at the March 11, 2008 Board meeting.

ANALYSIS AND RECOMMENDATION:

The issues under consideration are whether: (1) Murray has used her position to benefit herself and/or her husband when she participated in union contract negotiations during a closed session at the March 11, 2008 Board meeting; (2) Murray should have abstained and not participated in a matter involving PVFRS and IAFF that involved her husband acting as a presenter during the closed session; and (3) Murray violated the binding advisory opinion that was previously issued to her by this Commission as Opinion No. 06-03.

Murray allegedly violated:

- NRS 281A.400.2 when she allegedly used her position to benefit herself and/or her husband when she participated in union contract negotiations during the closed session at the March 11, 2008 Board meeting.
- NRS 281A.420.2 and .4 for allegedly failing to comply with the requirement to disclose and abstain on matters where the independence of judgment of a reasonable person in her situation would be materially affected by her commitment in a private capacity to the interest of others.
- NRS 281A.440.1(a) for allegedly failing to comply with a previous Commission advisory opinion that recommended she refrain from participation in confidential meetings concerning collective bargaining negotiations between Pahrump and PVFRS.

ANALYSIS AND RECOMMENDATION (CONTINUED)

The March 11, 2008 meeting agenda item is “[d]iscussion and decision closure of meeting pursuant to NRS 241.031(3a) (sic) to discuss labor settlement terms.” NRS 241.031 is a section in the open meeting law used when considering the character, misconduct or competence of an elected official of a public body or certain public officers, and states that such a meeting should not be held in a closed meeting with one exception.

The nature of the business to be considered and the authority authorizing the closed session was not made clear to the public as required under NRS 241.030.3. Board member, Rust, made comments before the Board entered the closed session stating that Murray should not be participating in the closed session. His statements indicate that other Board members were not properly informed. After Rust’s comments, Murray disclosed that she was related to the person making the presentation but that neither she nor her husband stood to receive any greater benefit or detriment and so she would participate in the closed session. At no time prior to the closed session was any attempt made to clarify the nature of the closed session in order to ease Rust’s concerns and to make the record clear that the closed session did not involve the issue of the collective bargaining agreement and/or any issues that the Town Attorney believed created a conflict for Murray.

Written statements from Joerger and McDonald were submitted with the Response. Both men stated that the closed session did not involve discussions about the collective bargaining agreement with PVFRS and IAFF. Attorney Joerger further stated that he agrees with *Murray Opinion No. 06-03* that Murray cannot participate in meetings or vote on the collective bargaining agreement. Murray consulted with him prior to the March 11, 2008 meeting. He informed her that it was his opinion that she had no conflict of interest and could participate in the closed session.

Acting Town Manager, Sullivan, attended the closed session and stated that the collective bargaining agreement was not discussed. Sullivan also mentioned to the investigator, Matt DiOrio, the discussion during public comment recorded in the Minutes of the March 25, 2008 Board meeting when McDonald responded to public criticism regarding the necessity of the March 11, 2008 closed session. McDonald stated that the newspaper article on the matter was in error. McDonald stated that the collective bargaining agreement was never a matter of discussion. The March 25, 2008 meeting Minutes state that Murray explained that her first call was to the Joerger for advice.

Murray Opinion No. 06-03 discusses Murray’s participation in confidential meetings involving labor negotiations with the Local while her husband is on the negotiating team. The Opinion stated that Murray can avoid an appearance of impropriety by refraining from participation by not attending any such meetings. The opinion specifically advised Murray regarding participation in collective bargaining agreements, but left it up to her to follow the guidance of the *Woodbury opinion* when determining whether to abstain on other matters pertaining to PVFRS and IAFF.

In the course of this investigation, Joerger, explained that he requested the closed session on the agenda to clarify a certain individual’s position in a matter to be set for arbitration. He requested that Tim Murray as President of IAFF make a presentation to the Board members regarding the union member’s side of the story. It was during this closed session that Tim Murray acted as a

representative for the members of the IAFF that were the subject of an ongoing arbitration and made a presentation to the Board members. Joerger made it clear that neither Tim Murray nor Laurayne Murray were the topic of this closed session and that neither one of them would gain a benefit or suffer a detriment resulting from the topic of this closed session.

According to McDonald, the March 11, 2008 closed session involved a “pre-arbitration offer from the Local concerning a disciplinary action involving town employees and to receive advice from the Town’s attorney pertaining to the same subject matter.” This matter involved Murray’s husband as a negotiator on behalf of the Local.

This matter raises the question of whether Murray should be involved in any type of negotiations where her husband represents and negotiates on behalf of the Local. Additionally, it raises the question of whether Murray should be involved with any matters relating to PVFRS due to the fact that PVFRS is the employer of a member of her household. At the very least, Murray should consider the following two passages from the *Woodbury Opinion No. 99-56*:

However, Commissioner Woodbury's decision whether to abstain on a particular matter (because his relationship to his son may have a *material* effect on a reasonable person's independence of judgment under NRS 281.501(2)(c)) involves a case-by-case evaluation of relevant factors. Such factors include but are not limited to Rodney's compensation arrangements with the James Law Firm; Rodney's responsibilities with the James Law Firm, including client development; Rodney's involvement with the matter which is before the County Commission; Rodney's involvement with the client represented by the James Law Firm (whether or not limited to the issue before the County Commission); and the compensation arrangements of the James Law Firm with the client. Unless such information is made available to Commissioner Woodbury, it will be difficult, if not impossible, for Commissioner Woodbury to make an appropriate disclosure and an informed evaluation of whether to abstain. In these circumstances, Commissioner Woodbury, of course, acts at his peril in two respects: (a) deciding what detailed disclosures will be sufficient to satisfy NRS 281.501(3); and (b) deciding whether the specific matter also warrants abstention under NRS 281.501(2). (original emphasis added)

One other argument advanced by Commissioner Woodbury warrants comment. Counsel for Commissioner Woodbury wrote that an absolute abstention requirement would hinder Rodney in his pursuit of his profession as a lawyer. In other words, the 'successes of the father' should not be visited upon the son. However, NRS 281 does not allow a balancing-of-hardships defense to unethical conduct by public officers. Commissioner Woodbury cannot violate his ethical duties to disclose or abstain, then defend his conduct by asserting that obeying his duties would result in some hardship to his son, Rodney Woodbury (or any other relative). So long as Commissioner Woodbury serves as a Clark County Commissioner, or in any other capacity as a public officer, he is obligated to act ethically, and family members (and others to whom he has private commitments)

must accept any resultant hardship. In this case, of course, Rodney Woodbury and the James Law Firm are not affected adversely as to appearances in a representative capacity before any government bodies other than the Clark County Commission and possibly its agencies.

The foregoing passages out of the *Woodbury* opinion make it clear that considering whether to abstain from an issue is a decision not to be taken lightly by public officers. Specifically, in the first passage the Commission speaks to the factors that must be known by Woodbury in order to make a properly informed decision as to whether to abstain on issues involving his son's employer and their clients. The evidence is not clear that Murray gave such consideration to whether to participate in the closed session on March 11, 2008. It certainly was not clear to Board member Rust, and it has only been made clear to this office after an investigation as to what "labor settlement terms" meant on the agenda and in the minutes. If indeed this situation arose out of a an enormous misunderstanding as characterized by Murray in her response or a newspaper article that was "grossly in error" as characterized by McDonald in his comments made March 25, 2008, that at a bare minimum the public was not fully informed by the agenda item, the motion to move into closed session and most importantly Murray's disclosure.

On the issue of the allegation that she used her position to benefit herself and/or her husband during the closed session meeting on March 11, 2008, there was no evidence submitted with the complaint or uncovered during the investigation to support the allegation that Murray violated NRS 281A.400.2. The fact that the subject of the closed session appears to be regarding a personnel issue not related to the Murrays would support the fact that there was no unwarranted privilege for Murray to secure or grant for herself or her husband.

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion on whether Murray violated NRS 281A.400.2.

A fellow Board member, Rust, was not clear as to whether Murray had a conflict sufficient to require her to abstain from participating in the closed session. Therefore, Murray's disclosure and required analysis of whether to abstain may have fallen short of the requirement to disclose sufficient information concerning her commitment or interest to inform the public of the potential effect of the action or abstention upon her or her husband.

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Murray violated NRS 281A.420.4.

Murray has a commitment in a private capacity to the interest of her husband. Whether the independence of judgment of a reasonable person in this situation would be materially affected is questionable given the fact that the situation was held in closed session. In *Opinion No. 06-03*, the Commission advised Murray that her "... participation in confidential meetings discussing the ongoing labor negotiations with the IAFF while Mr. Murray is on the negotiation team, would, at the least, give the appearance of impropriety. To avoid this appearance, the Commission recommends that Murray refrain from participation in such confidential meetings. One of the ways to do so would be not to attend at all." The potential exists that the March 11, 2008 closed session creates the same appearance of impropriety as a closed session involving

labor negotiations in general. As was stated in the *Kubichek Opinion No. 97-07*, "Prudential forethought, common sense and concern for appearances of impropriety will be the best prophylaxis."

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Murray violated NRS 281A.420.2.

When allegations arise regarding the failure of a public officer to comply with a previously issued, binding advisory opinion it is recommended that the full commission review and consider this alleged violation. Since the full commission issued the binding opinion on Murray, it should be the full Commission that reviews and considers the facts in this case because that *Opinion No. 06-03* was specific to the issue of whether Murray should participate in closed meetings regarding collective bargaining agreements, the application of that opinion may not apply to the same fact pattern alleged in this complaint.

Therefore, the recommendation is that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion on whether Murray failed to comply with a previous Commission advisory opinion (NRS 281A.440.1(a)).

CONCLUSION:

Just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations against Murray as outlined above. Only the full Commission has the authority to determine if her conduct in relation to these issues rises to the level of a violation of state law.

REPORT PREPARED BY:

Tami E. DeVries DATED: 4/30/08
TAMI E. DEVRIES
RESEARCH ANALYST

APPROVAL AND RECOMMENDATION BY:

Patricia D. Cafferata DATED: April 30 2008
PATRICIA D. CAFFERATA, ESQ.
EXECUTIVE DIRECTOR

ENDNOTES

¹ NRS 281A.160

1. “Public officer” means a person elected . . . to a position which is established by . . . a statute of this State . . . which involves the exercise of a public power, trust or duty.

² NRS 281A.400

2. A public officer . . . shall not use his position in government to secure or grant unwarranted privileges, preferences . . . or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281A.420.

(b) “Unwarranted” means without justification or adequate reason.

³ NRS 281A.420

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

➤ It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

➤ without disclosing sufficient information concerning the . . . commitment or interest to inform the public of the potential effect of the action or abstention, . . . upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. . . . if he holds an elective office, to the general public in the area from which he is elected.

⁴ NRS 281A.440

1. The Commission shall render an opinion interpreting the statutory ethical standards and apply the standards to a given set of facts and circumstances as soon as practicable or within 45 days after receiving a request, whichever is sooner, on a form prescribed by the Commission, from a public officer or employee who is seeking guidance on questions which directly relate to the propriety of his own past, present or future conduct as an officer or employee. He may also request the Commission to hold a public hearing regarding the requested opinion. If a requested opinion relates to the propriety of his own present or future conduct, the opinion of the Commission is:

(a) Binding upon the requester as to his future conduct . . .

⁵ **NCOE Opinion 97-07** Guidance regarding line between impermissible advocacy and permissible participation. The line between a statement of fact and a statement of advocacy for the purposes of former NRS 281.501(2) (cf. NRS 281A.420) is razor thin. Statements that begin with “in my opinion,” “I think,” “I believe” or “I would hope” are signals that the statement might be more advocate than informative. The intent of the statement is guiding. A statement of advocacy is prohibited, even if factual, because the intent of advocacy is to get the hearer to believe the same as the speaker, and where the speaker has special influence and power because of her position, the hearer might be influenced to act not because of the merits of the speaker's argument but because of the speaker's position itself. On the other hand, a statement of fact, without any overtones of advocacy, is allowed because the intent of the

speaker is merely to inform the hearer and so, theoretically, the person of the speaker should be irrelevant because information is information and facts are facts, regardless of who provides them. Because the consequences of crossing the line between permissible participation and impermissible advocacy will always rest upon the elected official proffering the statement, the best general rule is that an elected official who has already disclosed and abstained from a matter because of a disabling conflict of interest should always consider whether what she has to say really needs to be said and, if she thinks so, then she must be very careful with what she says and how she says it. Prudential forethought, common sense and concern for appearances of impropriety will be the best prophylaxis. Former NRS 281.501(2) (cf. NRS 281A.420) is not a strict prohibition, but a stiff caution. In other words, a member of the legislative branch may speak about a matter in which she is interested, but she had better know why, what and how before she does so. In re Kubichek, CEO 97-07 (6-11-1998).

Legally conflicted elected official may otherwise participate in a matter as a citizen applicant and provider of factual information. Where Ms. Kubichek, a member of the Humboldt County Board of County Commissioners, works for and operates a garbage hauling company and the County Commission is considering and deciding issues related to the county's garbage collection service and the closure of rural landfills, the Commission on Ethics opined that although former NRS 281.501 (cf. NRS 281A.420) would require Ms. Kubichek to disclose her interest in the company and abstain from voting on such matters, the statute would allow Ms. Kubichek to otherwise participate in those matters as long as she only participated as a citizen applicant and a provider of factual information before the County Commission. If Ms. Kubichek was an applicant for a permit before her County Commission, she would be required by former NRS 281.501 (cf. NRS 281A.420) to disclose her interest and abstain from voting on or advocating for the passage of her permit as a county commissioner, but she could step out into the audience and testify regarding her permit as an applicant because nothing in former NRS 281.501 (cf. NRS 281A.420) or elsewhere in the Nevada Ethics in Government Law (cf. NRS ch. 281A) would compel the conclusion that once Ms. Kubichek became a county commissioner she became barred for the remainder of her term from participating in the ordinary processes of Humboldt County government as any citizen would, and such a conclusion would severely restrict the pool of potential candidates for any office. In re Kubichek, CEO 97-07 (6-11-1998).

Statute allows public official to participate regarding issues about which the public official possesses unique and valuable knowledge and experience. The Commission on Ethics stated that former NRS 281.501(2) (cf. NRS 281A.420) explicitly prohibits only two acts by a member of the legislative branch, voting and advocacy, and therefore, the legislative intent is that anything that is not a vote or advocacy is allowed a member of the legislative branch. Although a member of the legislative branch may be required to abstain from voting and advocating on a matter, the Commission found that former NRS 281.501(2) (cf. NRS 281A.420) would allow the member to "otherwise participate" in the matter. In order to render that phrase meaningful, the Commission on Ethics opined that a public official could do something, e.g., provide facts as any other citizen, and that neither former NRS 281.501 (cf. NRS 281A.420) nor any other portion of the Nevada Ethics in Government Law (cf. NRS ch. 281A) require that a public official lose her voice after her election regarding issues about which she might possess unique and valuable knowledge and experience. In re Kubichek, CEO 97-07 (6-11-1998).

⁶ **NCOE Opinion 99-56** Requirements for disclosure and abstention by a county commissioner on matters in which the law firm that employed the commissioner's son appeared. In a previous opinion (see CEO 98-54 (5-7-1999)), the Commission on Ethics required a county commissioner whose son worked as an associate for a law firm that appeared frequently before the County Commission to disclose his relationship with his son, his son's relationship with the law firm and to abstain from participating in and voting on all matters before the County Commission involving applicants represented by the son's law firm. As a result of amendments to former NRS 281.501 (cf. NRS 281A.420) in 1999, the practical effect of which was to require more disclosure about the effects of a public officer's private commitments on the decision-making process and fewer instances of mandatory abstention, the Commission on Ethics revised the previous opinion and held that to comply with former NRS 281.501 (cf. NRS 281A.420): (1) whenever the law firm (or any law firm that employed the commissioner's son subsequently) appeared in a representative capacity before the County Commission, the county commissioner must disclose sufficient information concerning his commitment to his son to inform the public of the potential effect of his action as required pursuant to former NRS 281.501 (cf. NRS 281A.420) because the county commissioner's actions would reasonably be affected by his relationship with his son; and (2) the decision of the county commissioner whether to abstain on a particular matter involved a case-by-case evaluation of relevant factors to determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to his son. In re Woodbury, CEO 99-56 (12-22-1999)

Factors for consideration by a county commissioner regarding matters in which the law firm that employed the commissioner's son appeared before the County Commission. In determining pursuant to former NRS 281.501 (cf. NRS 281A.420) whether the independence of judgment of a reasonable person in the situation of a county commissioner whose son works as an associate for a law firm that appeared frequently before the County Commission would be materially affected by his commitment to his son, relevant factors that the county commissioner must consider on a case-by-case basis are: (1) his son's compensation arrangements with the law firm; (2) his son's responsibilities with the law firm, including client development; (3) his son's involvement with a particular matter before the County Commission; (4) his son's involvement with the client of the law firm, regardless of whether or not the involvement is limited to the issue before the County Commission; and (5) the compensation arrangement between the law firm and the client. In re Woodbury, CEO 99-56 (12-22-1999)

No balancing of hardships defense to unethical conduct. Former NRS 281.411 et seq. (cf. NRS ch. 281A) does not allow a balancing of hardships defense to unethical conduct by public officers. A public officer may not violate his ethical duties to disclose or abstain pursuant to former NRS 281.501 (cf. NRS 281A.420) and then defend his conduct by asserting that obeying his duties would result in some hardship to a person to whom he has a commitment in a private capacity. As long as the public officer serves in an official capacity, he is obligated to act ethically. Family members and other persons to whom he has a commitment in a private capacity must accept any resultant hardship. In re Woodbury, CEO 99-56 (12-22-1999)

⁷ **NCOE Opinion 06-03** As a member of the Town Board, Ms. Murray is a public officer who must commit herself to avoid conflicts between her private interests and those of the general public whom she serves. With that in mind, when she makes disclosure and abstention decisions whenever her husband or the PVFRS appears in a representative capacity before the Town Board, the burden is on Ms. Murray to follow the necessary steps outlined in the Woodbury Opinion.

In addition to being guided by the disclosure and abstention standards of NRS 281.501, as interpreted by the Woodbury Opinion, Ms. Murray should consult with legal counsel for the Town Board whenever possible.

Ms. Murray's disclosure, which must be made at the time a matter is being considered, is required whenever her actions would "reasonably" be affected by her commitment to her husband. However, the matter of abstention must be assessed by Ms. Murray on a case-by-case basis. Ms. Murray's abstention is mandatory whenever a reasonable person's independence of judgment would be "materially" affected by her commitment to the interest of her husband. In other words, she must disclose and abstain where the resulting benefit or detriment accruing to her husband is greater than that accruing to any other member of the general business, profession, occupation or group.

Although there is a presumption under NRS 281.501(2) that the independence of judgment of a reasonable person would not be materially affected by his private interest where the resulting benefit or detriment accruing to him or his private interest is not greater than that accruing to any other member of the profession, occupation or group, this does not mean that the public officer doesn't have to disclose his interests. Therefore, if a matter is before the Town Board and the resulting benefit or detriment accruing to Ms. Murray or Mr. Murray is not greater than that accruing to any other member of the profession, occupation or group, Ms. Murray would not need to abstain but she would still have to disclose her interest.

However, specifically, whenever the matter of the collective bargaining between PVFRS and the Town of Pahrump comes before the Town Board, the Commission advises Ms. Murray to disclose her interest and abstain. This is consistent with the Commission on Ethics Opinion 03-43/03-44 and its guidance to two school board members whose spouses were school district employees.